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IN THE

Supreme Court Of The United States

OCTOBER TERM, 1981

CONNIE LOUISE LASCANO,

Petitioner,

VS.

STATE OF ARKANSAS,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE ARKANSAS SUPREME COURT

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QUESTIONS PRESENTED FOR REVIEW

1. Whether or not a suspect must be advised of his or her rights under *Miranda v. Arizona*, 384 U.S. 436, 16 L.Ed. 2d 694, 86 S.Ct. 1602, and related cases, prior to any interrogation by the police officers.

2. Whether the petitioner's rights under *Miranda v. Arizona*, 384 U.S. 436, 16 L.Ed. 2d 694, 86 S.Ct. 1602, and related cases, were violated by the authorities in this case.

3. Whether the police may continue to use a psychological approach on a suspect in the form of statements to the suspect after the suspect indicates that the questioning is at an end.

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STATE OF ARKANSAS,

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PETITION FOR WRIT OF CERTIORARI TO THE ARKANSAS SUPREME COURT

The petitioner respectfully prays this Court to issue a writ of certiorari to review the judgment and opinion of the Arkansas Supreme Court set out herein, *infra*.

OPINION BELOW

The opinion of the Arkansas Supreme Court appears as *Connie Louise Lascano v. State of Arkansas*, —— Ark. —— (March 22, 1982) and is reproduced in the Appendix, *infra*. The order of the Arkansas Supreme Court denying rehearing was rendered on May 3, 1982, without opinion.

JURISDICTIONAL STATEMENT

The opinion of the Arkansas Supreme Court was issued on March 22, 1982. The petition for rehearing was denied without opinion on May 3, 1982. This Court has jurisdiction by virtue of 28 U.S.C. §1257(3).

CONSTITUTIONAL QUESTIONS INVOLVED

UNITED STATES CONSTITUTION, AMENDMENT 5

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

UNITED STATES CONSTITUTION, AMENDMENT 14

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of any citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

On the 24th day of October, 1980, the body of one Jeanie Hunt was found in her home in Washington County, Arkansas, under circumstances which pointed to homicide. On October 26, 1980, at approximately 7:30 p.m., two police officers drove to the petitioner's residence in Fayetteville, Arkansas, on what is known as Betty Jo Street. The officers knocked on the door and the petitioner answered. The officers requested that she accompany them to the office of the Sheriff of Washington County for an interview. The officers did not advise her that she was under no legal obligation to comply with such a request, such advice being required by *Rule* 2.2 and *Rule* 2.3, *Arkansas Rules of Criminal Procedure*, which provides as follows:

> "(a) A law enforcement officer may request any person to furnish information or otherwise cooperate in the investigation or prevention of crime. The officer may request the person to respond to questions, to appear at a police station, or to comply with any other reasonable request . . .
>
> (b) If a law enforcement officer acting pursuant to this rule requests any person to come to or remain at a police station, prosecuting attorney's office or other similar place, he shall take steps as are reasonable to make clear that there is no legal obligation to comply with such a request."

The officers brought her to the sheriff's office in a police car, placing her in the back seat. At the sheriff's office she was placed in the hands of Sgt. Doug Fogley. Sgt. Fogley, without advising her of any of her rights, asked the petitioner her name, date of birth, and telephone number.

Then the officer asked her if she was acquainted with the deceased, Jeanie Hunt. The petitioner answered that she was acquainted with her. Then the officer asked her concerning the last time she had seen the deceased. The petitioner replied that she had seen the deceased on Friday night, which was the night of the apparent homicide, at about 8:30. This was in the time period in which the apparent homicide had been committed, according to the medical testimony (R. 60). At this time, the officer advised the petitioner of her rights under *Miranda v. Arizona*, 384 U.S. 436, 16 L.Ed. 2d 694, 86 S.Ct. 1602. The petitioner was then asked whether or not she owned a gun, which she admitted she did own.

Subsequent to this she was formally placed under arrest, charged with the murder of Jeanie Hunt, based on the fact that she had admitted to the investigating officers at the start of the interrogation that she had been with Jeanie Hunt at the approximate time of death (R. 83).

Subsequent to the first interrogation and on October 27, 1980, the petitioner was interviewed by the Sheriff of Washington County, Herb Marshall. She at that time was in custody in the Washington County Jail. The sheriff asked the petitioner if she was still "aware of her rights" (R. 159). The petitioner told him she was. The sheriff then told the petitioner that one of two people had killed Jeanie Hunt, the petitioner or her boyfriend, Ben Hunt (R. 159). The petitioner, when confronted by Sheriff Marshall stating to her that he would have to arrest Ben Hunt, her boyfriend (R. 160), told the sheriff that she committed the crime (R. 160). Prior to this time the petitioner had informed the sheriff that she did not want to make any more statements or talk anymore (R. 210). The sheriff threatened her with

involving Ben Hunt in the murder if she refused to answer questions. This type of questioning resulted in the petitioner signing a written confession, identified as State's Exhibit 17 (Appendix).

Sgt. Fogley, well knowing the result of the interview with Sheriff Marshall and shortly *after* the interview and on the same day, read to the petitioner her *Miranda* rights. Then Sgt. Fogley wrote out a written statement based on the previous interview with Sheriff Marshall (R. 517) and Ms. Lascano signed it (State's Exhibit 17, Appendix).

Information was filed against the petitioner charging the petitioner with murder in the first degree in violation of Ark. Stats. Ann. §41-1502. Petitioner was found guilty of murder in the first degree and was sentenced to thirty-five years in the Department of Corrections.

Motions to suppress were filed (R. 8, R. 22-23) which were overruled by the trial court. On the trial of the case, State's Exhibit No. 17, the alleged confession on the part of the petitioner, was introduced over the objections and exceptions of the petitioner.

ABSTRACT OF PERTINENT TESTIMONY

DOUG FOGLEY:

DIRECT EXAMINATION (R. 58-96)

I saw the defendant at the sheriff's office on October 26th about 7:55 p.m. (R. 59). I was in the CID office with Sheriff Marshall and Deputy Rexford when Ms. Lascano was brought back there (R. 60). I advised her that we were conducting an investigation into the homicide regarding Jeanie Hunt and that we were talking to everybody who might have known the victim (R. 60). I got some basic information, her name, date of birth, telephone number, and then I asked her if she was acquainted with the victim and she said she was. Then I asked her the last time she had seen the victim (R. 60). She said Friday night. I said, "Friday night?" and she said, "Yes, about 8:30 (R. 60)." At that time I stopped the interrogation and advised her of certain rights. I realized that the victim was killed in the general time period (R. 60). The rights were reduced to writing, the defendant signed it (R. 61).

I then asked her to explain her actions from 7:30 on the night in question and she gave me a statement of what she had done. The statement was not incriminating (R. 65). I told her I felt we had enough probable cause to hold her for a murder charge on Jeanie Hunt (R. 83).

Q. Would you recite to the Judge the factors you had in connection with this case that caused you to believe you had probable cause to arrest Ms. Lascano (R. 83)?

A. The very first fact was that prior to executing the rights waiver that she had in fact been with the

victim and had seen the victim by her own admission at the approximate time of death (R. 83).

CROSS-EXAMINATION (R. 96-113)

I first saw her before 8 p.m. on October 26th at the Washington County Sheriff's Office, criminal division. I know that she did not drive her own vehicle to the sheriff's office (R. 96). From my own calculations, I believe that the death had occurred Friday evening (R. 97). We interviewed Ms. Lascano two days after the death.

Q. At whose direction was Ms. Lascano taken into custody (R. 97)?

A. At whose direction was she taken into custody? She was picked up at the direction of the sheriff (R. 97).

The questioning was done at the police station. The information that caused us to act was information she gave us that she had seen Jeanie Hunt the evening that we believed her death to have occurred (R. 100).

REDIRECT EXAMINATION (R. 113-119)

Connie Lascano's name came into the investigation as being an acquaintance of Ben Hunt (R. 114). We also had information from a witness, Kent Starr, that had spoken with the victim at approximately nine o'clock (R. 115).

Q. I take it somewhere in that interview with her you told her she was a suspect in this homicide, is that correct (R. 115)?

A. She was well aware of that when I stopped to read her her rights (R. 115).

RECROSS EXAMINATION (R. 119-122)

Q. You stated to Mr. Smith that you had some information that an individual by the name of Kent Starr had spoken with Jeanie Hunt about nine o'clock on the evening of her death.

A. That was the probable cause that I had.

I inadvertently left it out and it was very important to me at the time when I first arrested Ms. Lascano (R. 120).

Q. So when you took her into custody to question her on an investigatory basis, you realized and you believed that she was possibly a person with a motive to have done this killing?

A. (There was no response) (R. 122).

I possibly told her that she and Mr. Hunt were the only people with a motive (R. 122).

SUE WILSON:

DIRECT EXAMINATION (R. 124-132)

I am an employee of the Washington County Sheriff's Department. I was present at an interview of Ms. Lascano by Sheriff Herb Marshall. It took place about three o'clock on October 27, 1980 (R. 125). The sheriff asked her if she remembered her rights and then asked her if she wanted an attorney and she responded, "No" (R. 126). I made notes of the interview (R. 127). There were no threats made to her, the only thing that I think made her finally tell Herb was the fact that he wanted to include Ben conspiring with her (R. 131). She just wanted Ben left out of it completely (R. 132). He told her that until the gun was found he would have to assume that she could have been in on it with someone else and he just kept stressing that "we need

to find the gun (R. 132)." I guess she just wanted to clear Ben because the sheriff said, "You could have conspired with Ben, and unless we find the gun, we won't know (R. 132)."

CROSS-EXAMINATION (R. 133-146)

It seems to me that she had been in jail awhile.

Q. You stated to Mr. Smith that you believed the sheriff had asked her if she wanted an attorney.

A. When she first came in it was just "no" to everything (R. 134).

My notes do not reflect that the sheriff asked her if she wanted an attorney (R. 134).

Q. Do these notes, are they an accurate reflection of everything that took place in the office?

A. Yes, I believe so (R. 135).

Q. And if they do not include the fact that he asked her about an attorney, then he probably did not?

A. Probably did not (R. 135).

The interview took about forty minutes (R. 135).

Q. Was there a form filled out, was she advised of her rights at this time?

A. No, I don't believe so. The sheriff said, "Do you remember when we read you your rights?" And she said, "Yes" (R. 137).

The sheriff told her that Ben and her could have been in on it together and was going to apply efforts towards Mr. Hunt (R. 138).

Q. He made those statements before she admitted anything, didn't he?

A. Huh-uh. Then she admitted it all. "OK, I'll say I did it." "It's over with. Ben had nothing to do with it." (Defendant's Exhibit Exhibit A, notes of Sue Wilson, introduced into evidence, Appendix).

The sheriff wanted to include Ben Hunt in a conspiracy situation. I believe this had something to do with Ms. Lascano talking (R. 145-146). The interview took about forty minutes. She didn't admit having anything to do with the killing until after the sheriff had talked about this conspiracy situation (R. 149). The sheriff meant a conspiracy between Ms. Lascano and Ben Hunt to kill Jeanie Hunt.

CROSS-EXAMINATION (R. 153-155)

The sheriff reminded her that Ben Hunt could not be completely cleared until after the gun was found (R. 153) and that if she didn't help him find the gun, Ben Hunt was going to be involved (R. 153-154). She finally said she had thrown the gun in the river after she left Jeanie's house (R. 154). Ms. Lascano was in custody and had spent the night in jail (R. 155).

HERB MARSHALL:

DIRECT EXAMINATION (R. 156-163)

I saw the defendant at the Washington County Sheriff's Office (R. 156). Her rights were given to her by Doug Fogley in the presence of Deputy Rexford (R. 157). The next day I had an opportunity to talk to Ms. Lascano. It was about 2:45 p.m. in the afternoon. That would have been Monday. I asked the jailer to bring Ms. Lascano to the CID office (R. 158). I asked her if she had made a telephone

call yet. She said no. I asked her if she had called her parents and she said no. I asked her if she wanted to make a telephone call. She said no. I asked her if she wanted to call an attorney and she said no (R. 159). I told her I wanted to talk to her about the case and what I said was, "Are you still aware of your rights?" and she said, "Yes" (R. 159). And I said, "You know that you don't have to talk to me." She said, "I know that." Then I said, "I feel like you know who killed Mrs. Hunt." I said, "It had to be one of two people. It's either you or Ben Hunt" (R. 159). She said there was no conspiracy between her and Ben Hunt, and I said, "Well, you know I am going to have to pick up Ben Hunt" (R. 160). She said, "Ben had nothing to do with it." I said, "How do you know Ben had nothing to do with it?" She looked at me and said, "I done it" (R. 160). I asked her if she done it, where is the gun? She never answered me. I told her that if Ben Hunt had nothing to do with it, then she and only she would know where the gun was (R. 160). She then said she threw it in the river. I never did threaten her (R. 161). She never did indicate that she wanted to stop and talk to her attorney. She was reluctant to call anybody (R. 162).

CROSS-EXAMINATION (R. 164-180)

I was present when she was first taken into custody on Sunday evening (R. 164). When she arrived at the CID office, she walked into the room with Officer Rexford. I considered her as a suspect in a homicide case. I was present when she told Sgt. Fogley at the first interview that she had been at Jeanie Hunt's house the night Jeanie Hunt was killed (R. 165). He then asked her when was the last time she saw Jeanie Hunt, and she said, "Friday night," and he said, "What time?" and she said, "About 8:30," and

that is when he stopped her and read her her rights (R. 166). She was booked on Sunday evening and was in jail until my interview with her at 2:45 on Monday (R. 169). Before she admitted anything to me on Monday, Ben Hunt's name was brought up (R. 170). It was in this first interview on Monday that she told me that she and Ben had been having an affair. I told her that I intended to pick Ben up and bring him back in (R. 171). I told her that I already had officers out to pick him up (R. 172). I told her that I would have to "come down on him hard" (R. 173). She told me she loved Ben (R. 174). She confessed at this point and I said either you or Ben killed Mrs. Hunt, and she said, "Ben had nothing to do with it" (R. 175), and she said, "I done it."

I asked her why she was not eating her meals. She said she was not hungry (R. 169) She was living on Cokes. I advised her that she possibly needed psychiatric treatment (R. 168).

CONNIE LOUISE LASCANO:

DIRECT EXAMINATION (R. 200-215)

I remember when I was first informed by the sheriff's office that I was wanted for questioning (R. 200). Two officers came to my door and said they wanted me for questioning (R. 200). They placed me in the back seat of their car and told me that this was in regard to Jeanie Hunt's death. They took me to the sheriff's office. Sgt. Fogley interviewed me on the Sunday evening (R. 202). The only persons present were police officers (R. 203). Sgt. Fogley discussed with me the possibility of taking a polygraph examination. He made it sound like that if I didn't

take it that they would consider me guilty (R. 203). After the test, Sgt. Fogley interviewed me again (R. 203). He said that I had flunked the test and that I might as well confess (R. 204). I was confused and scared at this point. I spent that night in the county jail and was interviewed the next day by Herb Marshall, the sheriff (R. 205). He told me that Ben surely had a motive to kill Jeanie and that there was a $15,000.00 life insurance policy on Jeanie and that was enough motive for him to want Jeanie dead (R. 206). It was very important to me that Ben Hunt not be involved in this situation (R. 206). He told me that he would bring Ben in and really be hard on him (R. 209). I was very scared for Ben (R. 209). The sheriff told me he thought I was a very sick girl and that I certainly wouldn't go to prison, that they would send me to the Arkansas State Hospital (R. 210). I told Sheriff Marshall not to talk to me anymore. This was in the middle of the interview. I told him that I didn't want to answer anymore questions. He told me the night before that I didn't have to (R. 210). Then he said I had to answer the questions or Ben would be brought in. I couldn't afford an attorney. I understood from them that they would appoint me one but I would have to wait until the judge did it (R. 210). I also thought I could say I didn't want to answer anymore questions and they wouldn't question me anymore. When I tried that the sheriff just kept on (R. 210). I said that I would say that I killed Jeanie if he would stop asking me questions. I didn't want to talk to him anymore (R. 210-11).

Q. What did he say to you?

A. Well, after I told him I didn't want to answer anymore of his questions, he said I had to answer ques-

tions. If they didn't find the gun they would still involve Ben in conspiracy charges.

I refused to say anything at first and that I didn't want to say anymore. Then he kept going on about how he needed the gun (R. 211). The sheriff told me that Ben Hunt would be involved unless there was evidence from a firearm (R. 211). I was very upset about what Herb Marshall had said about Ben. I knew that Ben couldn't handle anymore stress (R. 212). Later that afternoon, Sgt. Fogley came to talk to me in the prosecutor's office. I gave him a statement of what happened. The threats towards Ben had an effect on my statements (R. 213).

CROSS-EXAMINATION (R. 215-236)

The first interview was at the sheriff's office on October 26th. They advised me of my rights after I told them I had been with Mrs. Hunt Friday night around 8:30 (R. 218). Another interview was conducted concerning the gun (R. 222). When they couldn't find the gun, I told them I didn't know where it was and Officer Fogley told me I was going to be held for the murder of Mrs. Hunt. The interview stopped around midnight (R. 225). Officer Fogley indicated a couple of times that I might want to talk to a lawyer. This happened on October 26th. When he read me my rights, he asked me if I wanted a lawyer (R. 227). When I was taken to the sheriff's office, Sheriff Marshall and Mrs. Wilson were the only ones there. The reason I told the sheriff about doing this was because I didn't want to see Ben Hunt interrogated (R. 228). The sheriff asked me about my health and why I wasn't eating and offered to let me call my parents and offered to let me call an attoroney (R. 230). I thought I couldn't get an attorney until I went to court. I couldn't have one appointed unless I went to

court (R. 230). I told them I didn't have to answer questions if I didn't want to (R. 231). Sheriff Marshall just said he'd drag Ben in. He said, "I'll bring him in, grill him, and be real hard on him" (R. 232).

REDIRECT EXAMINATION (R. 236-244)

When I was at the police station I understood that if I wanted to call an attorney I could, but since I couldn't afford one I would have to wait until one was appointed. I understood that if I didn't want to talk to them anymore, they would stop. Herb Marshall just ignored it and went on (R. 238).

(End of testimony on Motion to Suppress.)

SGT. FOGLEY, during trial of the case:

I had an opportunity later to take a written statement from Ms. Lascano (R. 500). This statement was taken from Ms. Lascano after she was informed and advised of her Miranda rights (R. 500).

(State's Exhibit 17 was introduced in evidence over the objection of the defendant, R. 501-509, see Appendix.)

This statement was concluded at 7:01 p.m. October 27, 1980, and is signed by Ms. Lascano. This statement is in my handwriting (R. 515). I read it to her.

CROSS-EXAMINATION

I started questioning her at 5:13 p.m. on October 27, 1980, and ended at 7:01 (R. 516). I knew the contents of the previous interview with Mr. Marshall (R. 517).

ARGUMENT

1. WHETHER OR NOT A SUSPECT MUST BE ADVISED OF HIS OR HER RIGHTS UNDER *MIRANDA v. ARIZONA*, 384 U.S. 436, 16 L.Ed. 2d 694, 86 S.Ct. 1602, AND RELATED CASES, PRIOR TO ANY INTERROGATION BY THE POLICE OFFICERS.

The officers in this case had focused attention on two people as prime suspects in the alleged homicide — the husband of the deceased, Ben Hunt, and the petitioner, Connie Lascano. Quoting from Sgt. Doug Fogley's testimony: "I possibly told her that she and Mr. Hunt were the only people with a motive" (R. 122), and the quotation of Sheriff Herb Marshall when he testified, "I said, 'It had to be one of two people. It's either you or Ben Hunt' " (R. 159).

Sgt. Fogley, in answer to the question, "At whose direction was Ms. Lascano taken into custody?" (R. 97) testified: "A. At whose direction was she taken into custoday? She was picked up at the direction of the sheriff" (R. 97). Then he further testified: "The information that caused us to act was information she gave us that she had seen Jeanie Hunt the evening that we believed her death to have occurred" (R. 100).

Sgt. Fogley testified that Connie Lascano's name came into the investigation as being an acquaintance of Ben Hunt (R. 114), and then testified: "We also had information from a witness, Kent Starr, that had spoken with the victim at approximately nine o'clock" (R. 115).

In *Miranda v. Arizona*, 384 U.S. 436, 16 L.Ed. 2d 694, 86 S.Ct. 1602, 10 ALR 3rd 1060, the Court approved the in-

structions given to agents of the Federal Bureau of Investigation as follows:

> "(2) When is the warning given? The FBI warning is given to a suspect at the very outset of the interview."

It is also stated in *Miranda v. Arizona*, supra:

> "Over the years the Federal Bureau of Investigation has compiled an exemplary record of effective law enforcement while advising any suspect, or arrested person, at the outset of an interview, that he is not required to make a statement, that any statement may be used against him in court, that the individual may obtain the services of an attorney of his own choice and, more recently, that he has a right to free counsel if he is unable to pay."

The sheriff, Herb Marshall, had testified:

> "I was present when she was first taken into custody on Sunday evening (R. 164). When she arrived at the CID office she walked into the room with Officer Rexford. I considered her as a suspect in a homicide case."

This interrogation did not take place in the home of a relative or in the presence of friends or in the home of the defendant, but in the CID interrogation room of the sheriff's office. No play on words by the officers in these interrogations can obscure the fact that the petitioner was one of two prime suspects.

With the background information the officers possessed, there was no excuse for not giving the defendant her

warnings prior to the commencement of interrogation. The only thing the officers needed to know was who was present at the victim's home at about 8:30 p.m. on Friday night. The giving of the *Miranda* warning after eliciting this information from the petitioner was "closing the barn door after the horse is out."

It is said in *Silverthorne Lbr. Co. v. United States*, 251 U.S. 385 (1920):

> "The essence of a provision forbidding the acquisition of evidence in a certain way is that not merely evidence so acquired shall not be used before the court, but that it shall not be used at all."

Under *Escabedo v. Illinois*, 378 U.S. 478 (1964), the decisive state is reached when the investigation has begun "to focus on a particular suspect".

In the notes to *Miranda v. Arizona*, supra (10 ALR 3rd 1060), it is said:

> "However, the Court in *Miranda* no longer attempted to draw a line between the 'investigatory' and 'accusatory' process."

The warnings required and the waiver necessary are, in the absence of a fully effective equivalent, prerequisites to the admissibility of any statement made by the defendant. In *Miranda v. Arizona*, supra, it is said:

> "No distinction can be drawn between statements which are direct confessions and statements which amount to admissions of part or all of an offense. The privilege against self-incrimination protects the individual from being compelled to incriminate himself in any manner, it does not distinguish degrees of incrimination."

2. WHETHER THE PETITIONER'S RIGHTS UNDER *MIRANDA v. ARIZONA*, 384 U.S. 436, 16 L.Ed. 2d 694, 86 S.Ct. 1602, AND RELATED CASES, WERE VIOLATED BY THE AUTHORITIES IN THIS CASE.

The rights of the petitioner were violated by the authorities in this case. First, in the initial interrogation. Secondly, in the subsequent interview on October 27, 1980. The sheriff merely asked her if she was aware of her rights. During this interview it is testified that the sheriff began rather a psychological form of pressure on the petitioner. The sheriff well knew the relationship between the petitioner and Ben Hunt, the husband of the victim of the homicide. He knew the emotional state of the petitioner. It is testified that at about the middle of the interview, the petitioner informed the sheriff that she didn't want to answer anymore questions or talk to him anymore (R. 210-211). It is testified that the sheriff then began a psychological ploy. In *Miranda v. Arizona*, supra, the Court said:

> "Again we stress that the modern practice of in-custody interrogation is psychological rather than physically oriented. As we stated before: 'Since *Chambers v. Florida*, 309 U.S. 227, 84 L.Ed. 716, 60 S.Ct. 472, this Court has recognized that coercion can be mental as well as physical.' "

The sheriff at this point began accusations against Ben Hunt in which he threatened to involve Ben Hunt in the homicide charges, knowing full well the effect that this would have on the petitioner. That this form of interrogation took place is borne out in the notes made by the sheriff's secretary, Sue Wilson (Defendant's Exhibit A, Appendix).

We quote in full from the transcribed notes taken by Ms. Wilson, the sheriff's secretary:

> "At 2:45 p.m. this date Connie Lascano was interviewed by Sheriff Herbert Marshall in the Criminal Investigation Office at the Washington County Sheriff's Department concerning the shooting death of Jeanie Hunt. After being reminded of her constitutional rights by Sheriff Marshall and agreeing to answer questions, Connie Lascano admitted killing Jeanie Hunt. This was after being accused of conspiracy with Ben Hunt to do away with his wife. She admitted that she alone was responsible for the death and Ben Hunt had nothing to do with it. When Sheriff Marshall questioned Connie as to the whereabouts of the gun, she refused to tell him, saying that it was done and the gun wasn't needed. Sheriff Marshall reminded her that Ben Hunt could not be completely cleared until the gun was found to prove that his fingerprints were not on the gun. She finally said she had thrown the gun in the river after she had left Jeanie's house. She advised she had thrown the gun as far as she could in the river after crossing the bridge on Highway 58-E and turning to the left."

It is clear that the petitioner's rights were not given to her at the interrogation in the sheriff's office.

The confession given by the petitioner on October 27, 1980, after the initial interrogation on October 26, 1980, and after the interrogation by the sheriff was a continuous process. As said in *Miranda v. Arizona*, supra, in a decision

involving *Westover v. United States*, 384 U.S. 436, 16 L.Ed. 2d 694, 86 S.Ct. 1602, the Court said:

> "Despite the fact the FBI agents gave warnings at the outset of the interview, from Westover's point of view, the warnings came at the end of the interrogation process."

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3. WHETHER THE POLICE MAY CONTINUE TO USE A PSYCHOLOGICAL APPROACH ON A SUSPECT IN THE FORM OF STATEMENTS TO THE SUSPECT AFTER THE SUSPECT INDICATES THAT THE QUESTIONING IS AT AN END.

It is evidence from the notes of the sheriff's secretary (Defendant's Exhibit A, Appendix) and the testimony of the petitioner that even though the sheriff, at the request of the defendant, ceased asking questions or interrogating the witness that he continued with statements to the witness which were designed to "break her down". The threats to her boyfriend, Ben Hunt, etc. In view of defendant's emotional state, these statements by the sheriff were designed to wring a confession from the defendant. The psychological ploy is often more deadly than direct questioning. It is submitted that when the suspect indicates that he or she objects to answering anymore questions or being interviewed further, that all action shall stop.

The confession (State's Exhibit 17, Appendix) was a culmination of the original interrogation by Sgt. Fogley and Sheriff Marshall on two separate days without requisite warnings. Sgt. Fogley when the confession was given (State's Exhibit 17), did recite to the defendant the *Miranda* warnings prior to her signing the written confes-

sion. However, this was again "shutting the barn door after the horse had been stolen."

In *Nardone v. United States*, 308 U.S. 338 (1939), the Court held that information acquired by unconstitutional means were "fruits of the poisonous tree" and could not be used as evidence in a criminal prosecution. It is submitted that the confession designated as State's Exhibit 17 (Appendix) was the fruit of the poisonous tree.

The petitioner notes the absence of any decision from this Court clearly addressing the issue of psychological pressure brought to bear on a suspect, consequently this consideration in deciding whether to issue a writ of certiorari is here present. *Rule* 17(c), Supreme Court Rules, provides in pertinent part:

> "When a state court . . . has decided an important question of federal law which has not been but should be settled by this Court."

CONCLUSION

Counsel agrees with the reasoning in the dissenting opinions of Chief Justice Adkisson and Justice Purtle of the Supreme Court of Arkansas (Appendix).

For the aforementioned reasons and authorities, the petitioner respectfully prays this Court to issue a writ of certiorari to the Arkansas Supreme Court.

Respectfully submitted,

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